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MAY 23 1984
ALEXANDER L. STEVAS.
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No. 83-1638
IN THE

Supreme Court of the United States

October Term, 1983

CHRISTOPHER EDDY, *et al.*,

Petitioners,

vs.

UNITED STATES OF AMERICA AND THE HOOPA VALLEY
TRIBE,

Respondents.

**RESPONSE OF CERTAIN INDIVIDUAL RESPON-
DENTS [PLAINTIFFS AND APPELLANTS IN
THE COURTS BELOW] TO PETITION FOR WRIT
OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FEDERAL
CIRCUIT.**

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Statement of the Case

The instant case was initiated in March, 1963 in the Court of Claims on behalf of certain Plaintiffs, seeking to appear as representatives of a class, to secure for those Indians of the Hoopa Valley Reservation who are not members of the Hoopa Valley Tribe aliquot shares of the profits derived from the sale of timber resources found on the unallotted land of a portion of the Reservation (the Square). These unallotted lands are held in trust for the Indians by the United States.

After an unsuccessful motion in the Court of Claims to dismiss the action, the United States requested that

the complaint be amended to include as named Plaintiffs all claimants meeting the standards of the class of Indians who would be entitled to recover if the court entered judgment in their favor. The complaint was subsequently amended to set forth the names of 3,323 individual Plaintiffs.

To simplify the litigation, the cases of 26 of these Plaintiffs were chosen for trial. In its decision of October 17, 1973, 202 Ct.Cl. 870,¹ the Court of Claims found against the United States on the question of liability. The court determined that 22 of the 26 sample Plaintiffs "are entitled to recover in amounts to be determined under Rule 131(c) and the claims of the others are set down for trial in accordance with the opinion." (D 283-284.)

In an exhaustive review of the history of the Reservation, and the rights of the Indians thereon, the Court of Claims determined that:

1. The Hoopa Valley Reservation was created pursuant to the Act of April 8, 1864, which authorized the President to set apart and locate not more than four Indian reservations in California, of such size as he found suitable, at least one of which was to be in the Northern District, for the accommodation of the Indians of California, without specification of the tribes to be so accommodated. The President had discretion to authorize any Indian tribes of California to reside upon such reservations as he set apart, and no Indian tribe resident upon a reservation created under the Act could obtain vested rights to the exclusion of another group or tribe of Indians thereafter authorized by the President to share in the benefits of the reservation. (D 247.)

¹The entire decision is set forth in Appendix D to the Petition for Writ of Certiorari of Christopher Eddy, *et al.* All references to the decision are to the appropriate pages of Appendix D.

2. By Presidential Order of June 23, 1876, the Hoopa Valley Reservation was established as one of the Indian reservations authorized to be set apart in California by the Act of April 8, 1864. The area included in the Reservation, pursuant to the Presidential Order, included the land (the Square) upon which exist the timber reserves involved in the instant case. (D 250-251.)

3. By further Presidential Order on October 16, 1891, the boundaries of the Reservation were extended to include additional territory (the Addition) upon which resided the ancestors of most of the Plaintiffs. The court held that "the plain and natural effect of the order was to create an enlarged reservation in which the Indians of the original reservation and the Indians of the added tracts would have equal rights in common." (D 251-252.)

4. In 1950, certain of the Indians on the original portion of the Reservation organized as the Hoopa Valley Tribe. Membership in the tribe was so defined as to exclude from membership a majority of the Indians of the Reservation including Plaintiffs. (D 211-228.)

5. Until 1955, revenues derived from all parts of the Hoopa Valley Reservation were deposited in a single United States Treasury Account. (D 236-237.) Commencing in 1955, however, revenues derived from the sale of timber on the Square portion of the Reservation were deposited in a separate account and payments of said revenues were made by the United States exclusively to the Hoopa Valley Tribe and its members. (D 239-241.)

6. The court held that the United States "acted arbitrarily in recognizing only the persons on the official roll of the Hoopa Valley Tribe, whose rules exclude from membership most of the Indians of the Addition, as the persons entitled to income from the unallotted trust-status lands of the Square. Such of the plaintiffs as are found herein to be Indians of the Reservation will be-

come entitled to share in the income from the entire Reservation, including the Square, equally with all other such Indians including Indians of the Square." (D 264-265.)

7. Twenty-two sample Plaintiffs were determined to be Indians of the Reservation entitled to recover a money judgment from the United States, the amount of which was to be determined under Court of Claims Rule 131(c), after determination of the entitlements of the remaining Plaintiffs. (D 265-284.)

In response to the 1973 decision of the Court of Claims, both the Hoopa Valley Tribe and the United States filed Petitions for Writ of Certiorari in this Court. The Petitions were denied, 416 U.S. 961, and rehearing was also denied, 417 U.S. 959.

Thereafter, on April 23, 1976, the Court of Claims permitted the intervention of an additional 515 Plaintiffs and ordered that "to the extent that this action has been treated as a class action, it is ordered that the class is hereby closed. . . ." (Order of April 23, 1976, 209 Ct.Cl. 776.)

Subsequent to the Court of Claims' determination of liability in 1973, a complex procedure was established by the trial judge, in consultation with the parties, through which the individual entitlement claims of the various Plaintiffs could be advanced and/or challenged. This procedure included the preparation of a detailed declaration questionnaire by each individual Plaintiff, describing his or her ancestry, Indian blood degree, and association with the Hoopa Valley Reservation. The Hoopa Valley Tribe and the United States, in turn, prepared detailed responses to each of these declaration questionnaires; and Plaintiffs' counsel then prepared an individual reply to each of the joint responses by the Tribe and the Government.

Following this process, a series of motions and cross-motions for summary judgment were offered in the Court of Claims with the result that the entitlement of an additional 120 Plaintiffs was conceded, and summary judgment for said Plaintiffs was granted in orders dated December 3, 1976, February 25, 1977, and April 27, 1978. Motions for summary judgment approving the claims of the remaining Plaintiffs, and cross-motions by the Hoopa Valley Tribe and the United States to deny those claims, were fully briefed before the trial judge in 1977.

On May 23, 1979, the United States made a motion to substitute a "Yurok Tribe" for the individual named Plaintiffs, and on November 16, 1979, the Hoopa Valley Tribe was granted leave to file a motion to dismiss the case on the theory that the formulation of entitlement standards by the court involved the determination of a non-justiciable political question.

On September 23, 1981, the Court of Claims upheld the recommended decision of the trial judge to deny both the motion of the United States and the motion of the Tribe on the ground that all of the issues raised by the motions had been repeatedly rejected during the course of the litigation. (C 42-43)²

Noting that "this suit was begun in 1963 and, except for cases transferred to us from the Indians Claims Commission, it is the oldest case on our docket," (C 34) the Court of Claims ordered the entitlement proceedings expedited, and remanded the matter to the trial judge "to issue by April 1, 1982, a recommended decision determining, under standards he will formulate in accordance with this opinion, which of the Plaintiffs whose cases are ready for disposition are Indians of the Reservation." (C 42.)

²The entire 1981 decision is set forth in Appendix C to the Petition for Writ of Certiorari of Christopher Sledge, et al. All references to the decision are to the appropriate pages of Appendix C.

As a matter of guidance to the trial judge in determining entitlement standards, the court said:

"In our 1973 decision, we found that the Hoopa Business Council in 1948 undertook to compile 'a current roll of the Indians of . . . the Square, for the purpose of controlling the revenues from the resources of the reservation as so defined.' Fdg. 136, 202 Ct.Cl. at 959, 486 F.2d 561. In determining the membership of the Tribe (to whom the Secretary made the payments), the Hoopa Business Council used a detailed and carefully drawn set of standards. We described and explained those standards in the findings in our 1973 decisions. Fdgs. 137-45, 148, 152(c), 155-56, 202 Ct.Cl. at 959-67, 986 F.2d 561. The Secretary aproved both the Hoopa Constitution (which specified the standards for membership in the Hoopa Valley Tribe, fdg. 145, 202 Ct.Cl. at 962, 486 F.2d 561) and two schedules which listed most of the Indians who had been determined to be members of the Tribe. Fdg. 153, 202 Ct.Cl. at 964, 486 F.2d 561.

"Although the situation of the Hoopas and the Plaintiff Yuroks may not be precisely the same, we conclude that the standards used to determine the membership of the Hoopa Valley Tribe also provide an appropriate basis for determining which of the Plaintiffs are Indians of the Reservation. . . .

" . . . those are the standards that the trial judge basically should apply on deciding the question." (C 36-41.)

The court added, however:

"In any case such as this, where it is necessary to formulate standards for determining the membership of a large class, probably it is impossible to achieve workable and manageable criteria that can

be easily applied and that will also produce the correct result in every situation. There is need for some flexibility, so that recognition can be given to the small number of cases in which the standards cannot be strictly applied or in which their strict application would produce manifest injustice. Moreover, there may be differences between the situations of the Hoopas and the Yuroks that necessitate some differences in the standards governing the membership of the two Tribes." (C 40-41.)

The court concluded:

"We leave to the trial judge's sound discretion to determine what, if any, changes should be made in the Hoopa standards and in the application of the governing standards in individual cases." (C 41.)

Following the cited decision, the Hoopa Valley Tribe and the United States again filed Petitions for Writ of Certiorari in this Court, and, again, the Petitions were denied. 455 U.S. 1034.

On March 31, 1982, the trial judge issued an opinion in which he established standards for qualifying Plaintiffs as Indians of the Hoopa Valley Reservation by applying to Plaintiffs, as he had been directed to do by the Court of Claims, the standards which had been utilized by the Hoopa Valley Tribe in determining the roll of its membership. (Appendix B to the Petition.) By application of these standards, the trial judge determined that an additional 2,161 Plaintiffs were entitled to recover in these proceedings, with the cases of the remaining Plaintiffs to be decided on subsequent motions.

All parties appealed the decision. Pursuant to an order of the Court of Appeals for the Federal Circuit, to which the case was transferred on October 1, 1982, under Section 403 of the Federal Courts Improvement

Act of 1982, (A 2)² the Court of Appeals allowed the United States and the Hoopa Valley Tribe to file new motions to dismiss on the grounds of jurisdiction. (A 2.) The Court of Appeals then denied the motions to dismiss (A 9), and sustained the entitlement decision of the trial judge without change, noting that "all parties' objections to the trial judge's standards and to his conclusions of law are disapproved." (A 20.)

On March 9, 1984, Petitioners filed their Petition for Writ of Certiorari.

Summary of Argument.

1. In determining which of the Plaintiffs are entitled to recover a money judgment in the instant case, the claimant must meet two tests. First, he must show that he is an Indian. Second, he must show that he has a sufficient connection with the Hoopa Valley Reservation to be considered "of the Reservation". The requirement that a claimant possess some Indian blood, for purposes of a recovery, does not create an impermissible racial classification, but merely assures that those recovering are in fact, Indians, since non-Indians are not among those for whose benefit the Reservation was established.

2. Petitioners have made no showing that they have received inadequate representation either in this Court or the court below. In the Claims Court, no Petitioner has been finally determined to be disqualified to recover as an Indian of the Reservation, and motions to entitle many of the Petitioners are currently pending in that court. Petitioners' counsel in the Claims Court continue to fulfill the duty undertaken by counsel: to secure, if possible, a recovery for every Plaintiff.

²Appendix A to Petitioner's Petition for Writ of Certiorari is the entire October 6, 1983 decision of the Court of Appeals for the Federal Circuit. All references to the decision are to the appropriate pages of Appendix A.

At the time counsel for the individual Respondents decided not to petition this Court for a writ of certiorari, Petitioners were given adequate notice of that fact, and were advised of their right to secure separate counsel for purposes of filing the petition. Petitioners have secured separate counsel for this purpose, and no showing has been made that they are inadequately represented in pressing their claim here.

3. This case, now 21 years old and hopefully nearing a conclusion, is not a proper vehicle for a general reformation of standards of professional conduct within the Federal court system.

ARGUMENT.

I

Defining Indians by Reference to Their Indian Blood Is a Permissible Method of Determining a Claimant's Status for Purposes of Recovering a Judgment Based Upon Indian Rights.

In 1973, the Court of Claims held that the United States acted arbitrarily in recognizing only the persons on the official roll of the Hoopa Valley Tribe as the persons entitled to income from the unallotted trust status lands of the Square. The court further held that such of the Plaintiffs as are found to be "Indians of the Reservation" will be entitled to share in the income from the entire Reservation, including the Square, equally with members of the Hoopa Valley Tribe.

Thus, for a Plaintiff to recover in these proceedings he must demonstrate two qualities: (1) that he is an Indian; and (2) that he is "of the Reservation." Merely being an Indian is not enough. Plaintiff must also show by ancestry or otherwise his association with the Reservation.

On the other hand, a mere association with the Reservation will not, by itself, suffice to permit a recovery. A successful Plaintiff must show that he has those qualities which enable the court to identify him as an Indian.

Congress has defined "Indian" in different terms to meet the needs posed by different circumstances.

Where appropriate, an Indian may be defined merely by his political association as a member of a tribe. 25 U.S.C. Section 450(b), for instance, defines "Indian" as "a person who is a member of an Indian tribe."

25 U.S.C. Section 479 defines the term "Indian" in several different ways for purposes of the Indian Reorganization act. An Indian may be a member "of any

recognized Indian tribe now under federal jurisdiction," or a resident of a reservation who is a descendant of a tribal member, or "all other persons of one-half or more Indian blood."

In a different context, 25 U.S.C. Section 480 defines Indians as persons with no less than one-quarter degree Indian blood.

25 U.S.C. Sections 651 and 659, pertaining to distribution of judgment funds to California Indians, define the Indians of California by reference to ancestry, rather than blood quantum. These statutes describe the Indians of California as "all Indians who were residing in the State of California on June 1, 1852, and their descendants now living in said state."

Each of the described statutes was adopted with a different applicability, and under differing circumstances. The point is that Congress has not adopted a single classification of Indians for all purposes, nor do Indian tribes, who are free to adopt their own membership criteria, define their memberships in identical ways. Some tribes require a specific blood degree quantum; others base membership on Indian ancestry without reference to specific blood degree; and others, like the Hoopa Valley Tribe, base their initial membership roll on a factor relating to Indian ancestry (allottees or their descendants), but require a specific blood quantum for members admitted after the initial roll is approved.

Nevertheless, all persons who base a claim on their status as "Indians" must, in some manner, demonstrate that they are, in fact, Indians. Proof of Indian blood quantum is merely one permissible method of making such a showing.

The court below determined that the most equitable way to determine which of the Plaintiffs are Indians of the Reservation is to measure Plaintiffs entitlement by

the same standards used by the Hoopa Valley Tribe to determine its membership. The Hoopa Valley Tribe's enrollment standards were based on (1) an initial roll which included those who had received allotments on the Reservation and their descendants without reference to specific Indian blood quantum, and (2) those born after the initial roll was approved, as to whom a one-fourth Indian blood quantum was required.

The court recognized that "the situation of the Hoopas and the Plaintiff Yuroks may not be precisely the same," (C 38) and so made allowance for the entitlement of additional Plaintiffs in situations of manifest injustice where a Plaintiff did not fall squarely within the Hoopa Valley tribal enrollment as applied to Plaintiffs.

Petitioners incorrectly charge that Plaintiffs' counsel in the courts below advocated adoption of this entitlement scheme, knowing that it would cause the disqualification of Petitioners. This is untrue.

What really happened is set out in the exhibits to the Petition:

1. The Claims Court, in adopting its entitlement plan, noted:

"We take comfort in statements by the Plaintiffs' counsel in oral argument that the Hoopa standards would be appropriate to apply in this case and that their use would permit a prompt completion of this litigation." (C 42.)

2. The application by the court of the Hoopa Valley Tribe's enrollment standards to Plaintiffs turned out to be substantially different from the application recommended by Plaintiffs' counsel in Plaintiffs' joint memorandum of pre-trial conference, March 12, 1981. (E 6-9.)

Specifically, the trial court and Court of Appeals did not treat census enrollment and descent from an enrollee

in the manner suggested by Plaintiffs' counsel. Nor did the court accept the 1976 date proposed by Plaintiffs' counsel as the date upon which to apply the initial enrollment criteria to each Plaintiff.

3. All parties were dissatisfied in one or more ways with the March 31, 1982 standards opinion of the trial judge (Appendix B), and all parties appealed the decision.

4. In the Court of Appeals, counsel for Plaintiffs argued for a modification of the decision which would have permitted the entitlement of Petitioners. The court, however, upheld the decision of the trial judge without change. The court said:

"To sum up, all parties' objections to the trial judge's standards and to his conclusions of law are disapproved." (A 20.)

5. While the individual Respondents do not agree with each and every aspect of the lower court's standards decisions, it cannot be properly said that these subject the Plaintiff group to an impermissible racial classification.

6. Nor does it follow that because the court did not in every particular adopt the entitlement standards advocated by Petitioners' counsel, Petitioners were not adequately represented in the courts below.

The Plaintiff Indians in the instant case are not members of any organized tribe. Consequently, some other method of determining their status as Indians had to be utilized by the court in determining who may participate in the judgment fund.

Where Indians are not members of organized tribes, their status as Indians may, of necessity, be determined either by blood quantum, or by reference to Indian ancestry.

II

Petitioners Have Been Adequately Represented Throughout the Twenty-One Year History of the Instant Case.

As has been noted *supra*, the instant case was initiated in March 1963 in the Court of Claims on behalf of certain claimants, seeking to appear as representatives of a class, to secure for those Indians of the Reservation who are not members of the Hoopa Valley Tribe aliquot shares of the revenues derived from the sale of the timber resources from the allotted land of a portion of the Reservation.

The United States made a motion to dismiss the action, and when the dismissal motion was denied, the United States requested that the complaint be amended to include as named Plaintiffs all claimants meeting the standards of the class of Indians who would be entitled to recover if the court entered judgment in their favor. Thus, the complaint was amended to set forth the names of 3,323 individual Plaintiffs. In 1976, the Court of Claims permitted the intervention of an additional 515 Plaintiffs and ordered that "to the extent that this action has been treated as a class action, it is ordered that the class is hereby closed..." (Order of April 23, 1976, 209 Ct.Cl. 776.)

Until 1975, all Plaintiffs in the case were represented by attorney Harold C. Faulkner. In 1976, 130 of the Plaintiffs were permitted to substitute Clifford L. Duke, Jr. as their attorney, with the remainder of the Plaintiffs continuing to be represented by Mr. Faulkner.

From the beginning of the case, it has been recognized that the individual Plaintiffs were not identically situated. They have varying degrees of Indian blood, and varying degrees of association with the Hoopa Valley Reservation.

Counsel accepted the burden of representing Plaintiffs, recognizing these variables, as did Plaintiffs themselves. Plaintiffs' counsel have acted in full accord with the duty to seek entitlement for every Plaintiff whom counsel represents. If any conflict was inherent in this situation, it was merely the possibility that as each Plaintiff was held entitled to recover, the size of the recovery of other successful Plaintiffs might be proportionally reduced in the total judgment fund.

As a practical matter, the 3,838 claims placed before the court could not have been undertaken on the basis of separate counsel for each Plaintiff. Such a requirement would have made economically impractical the prosecution of the individual claims; would have required an astronomical duplication of legal work; and would have so clogged the court system as to make impossible any resolution of the case which, even under present circumstances, has been in progress for 21 years.

In *Berman v. Narragansett Racing Assn.*, 414 F.2d 311, 317 (1969), the Court of Appeals for the First Circuit said, with regard to a class action suit:

"We think it likely that in any lawsuit involving vast numbers of litigants, some of them, for a variety of reasons, may ultimately fail to take part in the distribution. . . . But that fact, which cannot be determined by prejudgment, should not penalize those who are entitled to share. To deny them the class action device because 'as a practical matter' some may not share would defeat the purpose of the rule, i.e., to facilitate the joining of multiple small actions that would otherwise not be brought and to prevent repetitious litigation of claims."

The same principles apply to the instant litigation in which the strict class action procedure was not available. In the courts below, Plaintiffs' counsel diligently pursued

the claims of all those whose representation had been undertaken. Prior to the 1981 decision of the Court of Claims, counsel for the individual Respondents on whose behalf this brief is filed, made a motion to entitle each of the Petitioners represented by said counsel.

Petitioners allege that "a conflict of interest began to be apparent as far back as 1976 and probably earlier. . . ." (Petition, p. 25.) They attempt to justify this allegation, providing no evidentiary support, by arguing that Mr. Faulkner recognized that some Plaintiffs were more likely to qualify for entitlement than others. This is a truism, but meaningless in the absence of some showing that Plaintiffs' counsel did not diligently prosecute the claims of all clients whom they represented. No such showing is possible.

Petitioners next assert that "a conflict of interest among Plaintiffs became more obviously apparent in 1981 when the Hoopa Tribe membership standards were proposed to the trial court by Plaintiffs' counsel (E). . . . [T]he adoption of these standards without major modification, presented a clear inevitability that the interest of hundreds of Plaintiffs (Petitioners herein) would be jeopardized." (Petition, pp. 25-26.)

Petitioners' allegations are refuted by the following facts:

1. At the time the Court of Claims made its March 31, 1981 decision, mandating entitlement in accord with the standards of the Hoopa Valley Tribe (Appendix C), Plaintiffs' counsel believed that the application of those standards would allow the entitlement of Petitioners herein, as well as Respondents.

2. Counsel for Plaintiffs, on March 31, 1981, recommended to the court an application of the Hoopa Valley Tribe's standards which, if adopted, would have enabled Petitioners to recover in these proceedings. (E 6-9.)

3. When, on March 31, 1982, the trial court did not adopt the Hoopa Valley Tribe's standards as interpreted by Plaintiffs' counsel (Appendix B), Plaintiffs' counsel appealed the standards decision of the trial judge to the Court of Appeals for the Federal Circuit. (A 10-15.)

4. The Court of Appeals upheld the standards decision of the trial judge, and remanded the case to the U.S. Claims Court for further proceedings. (Exhibit A.) At this point, over 2,000 of the Plaintiffs had been held entitled to recover as Indians of the Hoopa Valley Reservation, and no judgment was entered finally disqualifying any of the Petitioners. Further motions on behalf of Petitioners were still possible in the Claims Court, and counsel began offering such motions. A number of these motions are now pending in the Claims Court, and others are in the process of being scheduled. To date, none have been denied. No Plaintiffs' case has been abandoned by counsel. No judgment has been entered against any Plaintiff.

The only real conflict in the case occurred when certain of the Petitioners indicated a desire to file a petition for writ of certiorari in the United States Supreme Court. This prospect had to be considered along with the reasonable anticipation that the Hoopa Valley Tribe would also file such a petition, asking for review of the entire Court of Appeals decision which upheld the entitlement of 2,161 Plaintiffs.

An overturning of the Court of Appeals decision would, of course, jeopardize the recovery of the majority of Plaintiffs in the case whose entitlement has been upheld by the Court of Appeals. Thus, Plaintiffs' counsel did, for the first time, face a real conflict in the Supreme Court between those Plaintiffs whose entitlement was assured by the Court of Appeals decision, and those Plaintiffs who believed they might not ultimately qualify under the decision.

Plaintiffs' counsel communicated to Plaintiffs the fact and nature of this conflict. (Said written communications are found in Appendices F and G to the Petition.) Counsel pointed out to Petitioners that "both in the Claims Court and in the Court of Appeals, we argued for entitlement standards which would have qualified every Plaintiff we represent," (F 2) and then informed Petitioners that counsel would not "risk the recovery of the 101 Plaintiffs whom we represented who have already been held entitled to recover by petitioning for writ of certiorari." (F 6.) Counsel explained:

"... If you are a Plaintiff who has not been held entitled to recover under the standards decision, you have a right to petition the United States Supreme Court for a writ of certiorari. While we have stated that we will not so petition on your behalf, we will certainly cooperate fully with you if you desire to retain an attorney who will so petition. If you desire to do so we urge you to act immediately." (F 7-8.)

Harold Faulkner, counsel for the majority of Plaintiffs, secured an extension of time in which Petitioners could file their petition for writ of certiorari.

The presence of Petitioners' petition before this Court is proof of the fact that Petitioners had ample time to secure representation and file their petition.

Contrary to the allegations of the petition, Plaintiffs' counsel have violated neither the letter nor spirit of the ABA Code Sections discussed; nor have counsel at any time "proposed a settlement of the case by refusing to oppose the standards adopted by the opposition without the consent of each of his clients." (Petition, p. 27.) No evidentiary support for such a charge has been presented.

To date, no Petitioner has sought to change representation or substitute counsel in the U.S. Claims Court

where the entitlement proceedings are still in progress, and where Plaintiffs' counsel are still battling to secure entitlement for each and every Petitioner whom counsel represents.

As Appendices F and G to the Petition demonstrate, Petitioners were given notice of their need for separate representation in the Supreme Court, and their presence before the Court clearly demonstrates that the notice was timely, adequate, and persuasive.

III

The Instant Case Is Not a Proper Vehicle Through Which to Attempt to Write New Federal Rules of Professional Responsibility.

Petitioners would like to use this case as a springboard for a general review of the professional responsibilities of counsel in the Federal court system. Petitioners say:

"This case presents an excellent and worthy opportunity for the court to address this compelling matter. Furthermore, inasmuch as the Federal Circuit continues to provide the central forum for resolution of American Indian disputes with the government, and multiple representation by the same counsel is common in those cases, it is incumbent upon this court to at least decide this issue in regards to the Federal Circuit." (Petition, p. 29.)

The instant case is now 21 years old. The liability of the United States to Plaintiffs was established in 1973.

Should this case become a vehicle for writing new Federal rules of professional responsibility, Plaintiffs may be required to wait many more years for the recovery to which they are entitled. No such result can be condoned.

The only real conflict which ever existed in the instant case was timely addressed and appropriately resolved by

Plaintiffs' counsel. Thus, in the Supreme Court, Petitioners have representation different than that of the individual Respondents. No conflict exists in the court below.

Conclusion.

In its decision on entitlement standards the Court of Appeals concluded with what its members described as "our fervent hope that this very old case will speedily be concluded in the light of the trial court's judgment now affirmed in its entirety by this court." (A 21.)

In accord with this fervent hope, it is respectfully requested that the court deny Petitioners' Petition for Writ of Certiorari.

Dated: May 21, 1984

Respectfully submitted,

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